141 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 06.04.2026
FAO-1093-2018 (O&M)

Saroj Devi & ors. ….Appellants

Versus

Haryana Roadways & ors. ….Respondents

FAO-3266-2016 (O&M)

ICICI Lombared General Insurance Co., ….Appellant

Versus

Saroj Devi & ors. ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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Present :- Mr. Shvetanshu Goel, Advocate and
Mr. Shivam Gupta, Advocate
for the appellants-**FAO-1093-2018**
for respondents No.1 to 4**- FAO-3266-2016**

Ms. Vandanaa Malhotra, Advocate
(Through video conferencing)
and Ms. Manvi Verma, Advocate
for respondent No.3- **FAO-1093-2018**
for the appellant**-FAO-3266-2016**

Mr. Naveen Singh Panwar, D.A.G., Haryana
for respondents No.1 & 2- **FAO-1093-2018**
for respondents No.5 & 6**- FAO-3266-2016**

Ms. Devika Kamboj, Advocate for
Mr. Vikram Singh, Singh, Advocate
for respondent No.7-**FAO-3266-2016**

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PANKAJ JAIN, J.(ORAL)

1 These two appeals are directed against order dated 30.03.2016 passed by Commissioner under Employee's Compensation Act, 1923 (for short, 'the 1923 Act').

2 **FAO-1093-2018** is at the behest of claimants seeking modification of the order *qua* interest awarded by the Commissioner. Mr. Shvetanshu Goel, Advocate for the appellants, submits that the Commissioner erred in restricting interest for the period of five years instead of granting the same in terms of mandate of Section 4A of the 1923 Act.

3 **FAO-3266-2016** is at the behest of insurance company challenging its liability to indemnify the employer- Haryana Roadways *qua* compensation awarded by the Commissioner. Ms.Vandanaa Malhotra, Advocate for the insurance company contends that the Commissioner erred in misreading the contract of insurance between the insured and the insurer. The policy was issued to indemnify third party loss. No premium was paid to cover the accidental loss caused to the driver.

4 I have heard learned counsel for the parties and have gone through the records of the case.

5 Section 4A of 1923 Act reads as under :-

> *"4A. Compensation to be paid when due and penalty for default.--(1) Compensation under section 4 shall be paid as soon as it falls due.*
>
> *(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he*

accepts, and, such payment shall be deposited with the Commissioner or made to the1[employee], as the case may be, without prejudice to the right of the 1[employee] to make any further claim.

[(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall--

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.--For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

[(3A) The interest and the penalty payable under sub-section (3) shall be paid to the 1[employee] or his dependant, as the case may be."

6 In view of above, this Court finds that the Commissioner erred in restricting the interest for five years and thus the impugned order militates against the statutory mandate. The interest also needs to be modified in terms of Section 4A of the 1923 Act. Claimants shall be entitled for interest @ 12%

p.a. on the compensation amount for the period commencing from 30 days after the date of accident, i.e. 30 days after 06.07.2010, till the date of actual realization of the compensation amount.

7 Needless to say, any amount already paid shall be set off and adjusted.

8 With the aforesaid observations, the order passed by the Commissioner is modified.

9 Appeal preferred by the claimants bearing **FAO-1093-2018** stands allowed in the aforesaid terms.

10 The Commissioner while deciding the issue *qua* liability of the insurance company observed as under :-

> *"The counsel for respondents no. 1 & 2 has argued that they are not liable to pay any amount of compensation as the bus stand insured with respondent no. 3. On the other hand counsel for respondent no. 3 has argued that the policy is only for third party and they have not taken the premium for driver, conductor and owner and that company is not liable to pay the compensation in this case.*
>
> *From the evidence of witness RW-7 and from the documentary evidence such as letter Ex. RW-7/B1, Ex. RW-7/B2, Ex. RW-7/B3, Ex. RW7/B4, Ex. RW-7/C1, and Ex. RW-7/C2 it is well proved that the respondent no. 3 has notified the rate of premium of third party Act policy of buses of Haryana Roadway for 47 seating capacity as Rs. 23,201/- for the year 2008 vide Ex. RW-7/B1 and RW-7/B2 and they have issued the policy Ex. RW-7/B3 in which they have charged total premium of Rs. 23,201/- for the carrying capacity of 47. This policy Ex. RW-7/B3 duly shows the bifurcation of total premium towards basic third party liability, paid driver and for adverse claims loading and shows that total premium Rs. 23,201/- is inclusive of paid driver risk also. Again the respondent no. 3 has notified the rate of premium of third party Act policy of busses of Haryana Roadway for 47 seating*

capacity as Rs. 23,898/-for the year 2009 vide Ex. RW-7/C1 and they have issued the policy Ex. RW-7/C2 in which they have charged total premium of Rs. 23,.898/- for the carrying capacity of 47. This policy Ex. RW-7/02 in respect same bus duly shows the bifurcation of total premium towards basic third party liability, paid driver and for adverse claims loading and shows that total premium Rs. 23,898/- is inclusive of paid driver risk also. Again on similar base the respondent no. 3 has notified the rate of premium of third party Act policy of buses of Haryana Roadway for 47 seating capacity as Rs. 30,644/- for the year 2010 vide Ex. RW-7/D1 and they have issued the policy Ex. RW-7/D2 in which they have charged total premium of Rs. 30,644/- for the seating capacity of 47. This policy Ex. RW-7/D1 in respect same bus do not show the bifurcation of total premium towards basic third party liability, paid driver and for adverse claims loading and do not show that total premium Rs. 30,644/- is inclusive of paid driver risk or not.

The insurer respondent no. 4 could not explain why they have issued <u>the premium rate for third party insurance of busses for the year 2010 vide Ex. RW-7/D1 in the similar lien as they have issued earlier vide RW-1/C1 for the year 2009 and vide Ex. RW-7/B2 for the year 2008</u>. The insurer could not explain why the policy Ex. RW-7/D1 do not have the bifurcation of the total premium as the earlier policy issued by them in respect of the same vide Ex. RW-7/C2 and vide policy Ex. RW-7/B3. The insurer could not explain if they have intended to charge any additional premium for paid driver than whey they have not notified their intention while issuing the premium rate vide Ex. RW-7/D1. Non explanation of these facts doubts the stand of insurer respondent no. 3."

11 Mrs. Vandanaa Malhotra, Advocate contends that since only basic premium for third-party loss was charged, there was no occasion to provide for bifurcation of the premium as no premium was paid for anything else. From the comparative analysis of insurance policies on record,

Ex. RW-7/C2, RW-7/B3 and RW-7/D1, it is evident that the premium charged in the later policy, which was in vogue at the time of accident is much more as compared to the earlier policies which were also third-party policies. Insurance company has failed to lead any evidence as to how the premium was calculated. There is no evidence to prove that on the date the policy was issued, rate of the premium of third-party policy was Rs.23,898/-.

12 In view thereof, this Court finds that merely for the reason that the insurance company did not provide for the bifurcation of the premium charged from the insurer, they cannot be absolved of their liability. More so when, in the contract of insurance for previous years, the insurer was paying premium for the accident cover *qua* employer-driver.

13 In view of the above, this Court finds that no fault can be found with the pure finding of fact recorded by the Commissioner. In the absence of any substantial question of law involved in the present appeal, which is a *sine qua non* to entertain an appeal under Section 30 of the 1923 Act, the present appeal-**FAO-3266-2016**, is ordered to be dismissed.

15 Photocopy of this order be placed on the connected file.

(PANKAJ JAIN)
JUDGE

06.04.2026
Pooja Sharma-I

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No